

MCKENZIE ATTACHMENT TO JOINT LETTER

AMERICAN ARBITRATION ASSOCIATION

JAMES W. BRANNAN, as Personal Representative of the Estate of Robert Indiana,

Claimant/Counterclaim Respondent,

v.

MICHAEL McKENZIE and AMERICAN IMAGE ART,

Respondents/Counterclaimants.

AAA Case No. 01-19-0001-9789

AFFIRMATION OF KYLE T. ISHMAN

I, KYLE T. ISHMAN, pursuant CPLR 2106, hereby declare:

1. I am an attorney in good standing admitted to practice before the courts of the State of New York. I am associated with the law firm Venable LLP, counsel to James Brannan as Personal Representative of the Estate of Robert Indiana (the “Estate”).

2. I submit this affirmation pursuant to paragraph 7 to the Panel’s September 14, 2021 Interim Award and Injunction (the “Interim Award”), which requires the attorney “present during the conduct of any inspection or physical inventory pursuant to this Interim Award and Injunction...to file in this arbitration, within five business days following completion of inspection or physical inventory at each site inspected, an affidavit or affirmation certifying that such inspection and physical inventory was conducted in accordance with and within the scope of this Interim Award and Injunction.”

3. Unless stated otherwise, I have personal knowledge of the facts set forth herein.

4. On September 20, 2021, my colleagues at Venable, Emily Seiderman West and Daniel Smith, conducted an initial inspection of Michael McKenzie's ("McKenzie") studio at 171 Goldens Bridge Road, Katonah, New York 10536 (the "Studio") and several storage units that McKenzie rents that are located at Safe Haven Self Storage, 360 NY-211, Middletown, NY 10940. At each location, works that appeared to be Indiana Artwork were stacked, mixed in, or otherwise intermingled with works that appeared to be attributed to people other than Robert Indiana. During that inspection, and with the permission and consent of McKenzie and his counsel, Emily Seiderman West and Daniel Smith took photographs and videos of the premises to assess the total scope of Indiana Artwork, defined in the Interim Award as "any work of art that is by or attributed to Robert Indiana" (Interim Award at paragraph 1), at each location and to determine which works were Indiana Artwork and not Indiana Artwork, as contemplated by paragraph 6 of the Interim Award. Apart from this limited exception, the Estate did not inspect any artwork not attributed to Robert Indiana.

5. On October 20, 2021 through October 22, 2021, with the help of Peter Whitney, Deborah Whitney, and Mahlon Whitney of Whitney Art Works (collectively the "Whitneys") I conducted an inspection and inventory of McKenzie's Middletown storage units. We were accompanied by McKenzie, Bridget Zerner (counsel for McKenzie), and Annette Vessecchia ("Vessecchia"), one of McKenzie's employees.

6. On October 20, 2021 after meeting at the storage units around 9:00 a.m., Bridget Zerner and McKenzie left mid-afternoon while Vessecchia stayed to supervise and let us in and out of the storage units. On October 21st and 22nd, only Vessecchia remained with the Whitneys and I to observe and let us in and out of the storage units on behalf of McKenzie.

7. During the inspection the Whitneys and I unpacked, measured, photographed, cataloged, and repacked works that we determined to be Indiana Artwork as defined in the Interim Award. I recorded that data in an excel spreadsheet.

8. No record was made of any non-Indiana artwork. If any artwork not attributed to Robert Indiana was observed by myself or the Whitneys, that was done merely to determine that it was, in fact, not an Indiana Artwork and with the permission and consent of McKenzie, his counsel, or Vessecchia.

9. On November 1, 2021 through November 3, 2021 I returned to Middletown to finish the inspection and inventory of the Indiana Artwork within the storage units at Safe Haven Storage that McKenzie rents. On November 1st and 2nd, Peter Whitney, Deborah Whitney, and I under the supervision of Vessecchia, completed the inventory and inspection with respect to those pieces of art that required careful handling and expertise using the same process as the October inspection and inventory. On November 3, 2021, under the supervision of McKenzie, my colleague at Venable Marisa Gomez, a Law Clerk at Venable LLP, and I finished cataloging the remaining Indiana Artwork.

10. On November 8, 2021 my colleague Marisa Gomez and I went to the Studio to inspect and photograph the *HOPE* sculpture displayed at the 2008 Democratic National Convention, a *HOPE* sculpture left behind in the apartment where Osvaldo Gonzalez used to reside, and Indiana Artworks stored in the basement of one of McKenzie's Katonah properties. We also conducted an inventory of the Indiana Artwork located in the Studio. We took an inventory only of those works we believed were Indiana Artwork.

11. Based on the facts set forth above, the inspection and physical inventory of Indiana Artwork in McKenzie's possession, custody or control was conducted in compliance with and within the scope of the Interim Award.

Executed on November 10, 2021.

/s/ Kyle T. Ishman

Kyle T. Ishman

From: Bridget Zerner
Sent: Wednesday, February 2, 2022 5:29 PM
To: 'Luke Nikas'
Cc: John Markham; Maaren Shah; Haley Banks; Ryan Rakower
Subject: RE: Meet and Confer via phone call

Luke: We are not refusing – the parties have already given discovery that addresses this matter and no further discovery is needed including because the declarations recently filed do not show that false statements were made at the depositions.

Bridget A. Zerner
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From: Luke Nikas <lukenikas@quinnemanuel.com>
Sent: Wednesday, February 2, 2022 5:13 PM
To: Bridget Zerner <bzerner@markhamreadzerner.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; Maaren Shah <maarensyah@quinnemanuel.com>; Haley Banks <haleybanks@quinnemanuel.com>; Ryan Rakower <ryanrakower@quinnemanuel.com>
Subject: Re: Meet and Confer via phone call

Bridget,

You have misunderstood my position about these issues, as you'll see when we send a draft of the joint letter. Am I correct to say that your client refuses to participate in any discovery related to art sales that would violate the Court's injunction, despite the declarations about these issues and the false statements he and Allen made in their depositions?

Luke Nikas
Partner

Quinn Emanuel Urquhart & Sullivan, LLP

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From: Bridget Zerner <bzerner@markhamreadzerner.com>
Date: Wednesday, February 2, 2022 at 5:05 PM
To: Luke Nikas <lukenikas@quinnmanuel.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>, Maaren Shah <maarensyah@quinnmanuel.com>, Haley Banks <haleybanks@quinnmanuel.com>, Ryan Rakower <ryanrakower@quinnmanuel.com>
Subject: RE: Meet and Confer via phone call

[EXTERNAL EMAIL from bzerner@markhamreadzerner.com]

Luke – To confirm our position, as you are going forward with a second sanctions motion, we believe the two motions should be consolidated and heard together with live testimony, we do not think further discovery as to the allegation of improper art sales is warranted but rather we should set a schedule for briefing on this second related issue of alleged misconduct and set the hearing to address both motions thereafter.

We will stand by for the draft joint letter you plan to send tomorrow morning to add our position. Thanks.

Bridget A. Zerner
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From: Luke Nikas <lukenikas@quinnmanuel.com>
Sent: Tuesday, February 1, 2022 5:49 PM
To: Carla Eutsler <CEutsler@markhamreadzerner.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; Bridget Zerner <bzerner@markhamreadzerner.com>
Subject: Re: Meet and Confer via phone call

Yes, please call me at 518-879-6653.

Luke Nikas
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Carla Eutsler <CEutsler@markhamreadzerner.com>
Date: Tuesday, February 1, 2022 at 5:40 PM
To: Luke Nikas <lukenikas@quinnemanuel.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>, Bridget Zerner <bzerner@markhamreadzerner.com>
Subject: RE: Meet and Confer via phone call

[EXTERNAL EMAIL from ceutsler@markhamreadzerner.com]

Thank you, Attorney Nikas.

Would 2pm tomorrow work for you? If so, please provide a number where you can be reached.

Sincerely,

Carla Eutsler

Legal Assistant
MARKHAM READ ZERNER LLC
Custom House
908 Main Street
PO Box 697
Waldoboro, ME 04572
Tel: (207)790-8049

From: Luke Nikas <lukenikas@quinnemanuel.com>
Sent: Tuesday, February 1, 2022 4:39 PM
To: Carla Eutsler <CEutsler@markhamreadzerner.com>
Cc: John Markham <jmarkham@markhamreadzerner.com>; Bridget Zerner <bzerner@markhamreadzerner.com>
Subject: Re: Meet and Confer via phone call

I am available tomorrow before 3pm to speak about Mckenzie's unlawful art sales. Please let me know if you're free before then.

Luke Nikas
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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From: Carla Eutsler <CEutsler@markhamreadzerner.com>

Date: Monday, January 31, 2022 at 2:52 PM

To: Luke Nikas <lukenikas@quinnemanuel.com>

Cc: John Markham <jmarkham@markhamreadzerner.com>, Bridget Zerner <bzerner@markhamreadzerner.com>

Subject: Meet and Confer via phone call

[EXTERNAL EMAIL from ceutsler@markhamreadzerner.com]

Attorney Nikas:

Attorney Markham asked me to reach out to you regarding scheduling a call.

Please let me know what your availability is tomorrow, Tuesday 2/1/22, after 10:30 EST.

Bridget is unavailable at 2:00 EST.

The MARKHAM READ ZERNER conference line can be used for the call. The dial-in number is 866-906-9888 and the participant code is 6869293 #.

Thank you.

Sincerely,

Carla Eutsler

Legal Assistant

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